

REMARKS

Applicant has carefully reviewed the Application in light of the Final Office Action mailed April 9, 2007. At the time of the Office Action, Claims 1-43 were pending in the Application. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 101 Rejection

The Examiner rejects Claims 34 and 35 under 35 U.S.C. § 101 proposing that the claimed invention is directed to non-statutory subject matter. Applicant respectfully defers this issue until the substantive patentability of the pending claims has been resolved. Applicant suggests an Examiner Amendment could be used to cure this issue and is amenable to such a modification.

Section 112 Rejection

The Examiner rejects Claims 34 and 35 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Applicant respectfully defers this issue until the substantive patentability of the pending claims has been resolved. Applicant suggests an Examiner Amendment could be used to cure this issue and is amenable to such a modification.

Section 103 Rejection

The Examiner rejects Claims 1-15, 18-34, 36-41 and 43 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2003/0219029 issued to Pickett (hereinafter "*Pickett*") in view of U.S. Patent No. 6,714,534 issued to Gerzberg et al. (hereinafter "*Gerzberg*"). The Examiner rejects Claims 16-17, 35 and 42 under 35 U.S.C. § 103(a) as being unpatentable over *Pickett* and *Gerzberg* as applied to Claims 1-15, 18-34, 36-41, and 43 above, and further in view of U.S. Patent 4,839,640 issued to Ozer et al. ("hereinafter *Ozer*"). This rejection is respectfully traversed for the following reasons.

Reviewing the previous rounds of correspondence illustrates that what the Examiner has done in the recent Office Action is to simply substitute *Gerzberg* for the flawed teachings

of *Pickett*. Applicant, an eternal optimist, is at least grateful for the Examiner acknowledging the shortcomings of *Pickett*. In particular, the limitation that seems to be an issue of dispute involves: “*a packet buffering, processing and management unit, said packet buffering, processing and management unit selectively accepting packets in response to a power failure.*”

Unfortunately, the proposed combination fails to disclose, teach, or suggest this limitation, which is recited in Applicant’s claims. Initially, the Examiner explained that *Pickett* discloses a system having a component for “accepting packets in response to a power failure,” but then conceded that *Pickett* does not disclose “selectively accepting packets in response to a power failure.” Office Action, p. 5 (emphasis added). The Examiner then relied on *Gerzberg* for the disclosure of a system that “selectively” accepts packets in response to a power failure. Office Action, p. 5.

Gerzberg is simply the wrong reference for anticipating this limitation. *Gerzberg* does not disclose, teach, or suggest “selectively accepting packets in response to a power failure.” The Examiner refers to column 7, lines 48-68 and column 8, lines 1-12 in support of his rejections, but the concept of selectively accepting packets in response to a power failure is not in any of these references. Instead, *Gerzberg* provides for a redundant switchable coupler serving as a “lifeline” that provides power and service to a telephone device if the cable television tap is being serviced or repaired. [See Col. 7, ll. 53-59.] Therefore, *Pickett* and *Gerzberg*, alone or in combination, fail to disclose, teach, or suggest this limitation. Accordingly, Applicant respectfully requests reconsideration and allowance of Independent Claim 1 and its dependents.

Independent Claims 24, 34, 36, and 37 each recite similar limitations. Therefore, Applicant respectfully requests reconsideration and allowance of Independent Claims 24, 34, 36, and 37, together with their dependents, for analogous reasons. Accordingly, all of the pending claims have been shown to be allowable, as they are patentable over the cited references. Notice to this effect is respectfully requested in the form of a full allowance of these claims.

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CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant believes no fee is due. However, if this is not correct, the Commissioner is hereby authorized to charge any amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact its attorney, Thomas J. Frame, at (214) 953-6675.

Respectfully submitted,
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